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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

KEITH SPENCER, Plaintiff, v. FIRST FEDERAL BANK; PRUDENTIAL REALTY, EARL WALLACE, JEN DAVIS, M.P.O., KEEFER & ASSOCIATES, 1-100, Defendant.	CASE NO. 08 CV 09 42 DMS LSP **NOTICE OF MOTION AND MOTION OF FIRST FEDERAL BANK OF CALIFORNIA TO DISMISS COMPLAINT OF KEITH SPENCER** **(Memorandum of Points and Authorities attached hereto)** Date: July 25, 2008 Time: 1:30 p.m. Crtrm.: 10

TO THE HONORABLE DANA M. SABRAW, UNITED STATES DISTRICT JUDGE:

NOTICE IS HEREBY GIVEN THAT on July 25, 2008 at 1:30 p.m., or as soon thereafter as the matter may be heard in Courtroom 10 of the United States District Court for the Southern District of California, located at 940 Front Street, San Diego, CA 92101-8900, Defendant First Federal Bank of California ("First Federal") will, and hereby does, move the Court for an Order dismissing the "Civil Complaint/Affidavit of Information" ("Complaint") of Keith Spencer ("Spencer").

PLEASE TAKE FURTHER NOTICE that First Federal requests that no appearance be necessary unless specifically ordered by the Court.

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

First Federal Bank of California ("First Federal") seeks to dismiss the Complaint of Keith Spencer ("Spencer") with prejudice. The so-called "Civil Complaint Affidavit of Information" ("Complaint") of Spencer against Defendant First Federal Bank of California ("First Federal") and others is the latest in a series of frivolous lawsuits filed with respect to the real property more commonly known as 1224 Weaver, San Diego, California, (the "Property"). The Complaint seems to borrow its disjointed reasoning, form and language from an ever-growing group of form lawsuits brought by *pro se* litigants against California lenders.

On or about June 9, 2005, Catherine Pope ("Pope") borrowed money from First Federal in the amount of $431,000.00. The funds were secured by a deed of trust covering the Property (hereinafter the "First Federal Deed of Trust"). (Request For Judicial Notice, Exhibit "A"). Pope failed to make the payments owed to First Federal, resulting in First Federal's filing a Notice of Default on or about February 8, 2007. (Request for Judicial Notice, Exhibit "B"). Thereafter, on June 14, 2007, First Federal foreclosed upon the Property and at the foreclosure sale, First Federal acquired lawful title to the Property. (*See* Trustee's Deed Upon Sale, San Diego County Recorder Doc. No. 0401580 , Exhibit "C" to RJN.)

Plaintiff Spencer was never a borrower of First Federal. Spencer has never owned the Property. Rather, Spencer suggests that he purchased the Property from an entity known as "Seminole Mortgages" in April 2008. However, this occurred long after First Federal acquired lawful title through the Foreclosure Sale. Further, the Complaint fails to allege any facts which show that First Federal has any relationship with Spencer or could have damaged Spencer. None of the facts in the Complaint implicate First Federal in any sort of wrongdoing; in fact, First Federal is not alleged to have taken any action at all with respect to these allegations. First Federal owns the Property and is therefore entitled to its

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possession. As a matter of law, a foreclosure sale extinguishes all junior interests, including possessory interests.

A. Similar Cases in the California

Spencer's Complaint bears all the hallmarks of a recent wave of substantially similar frivolous form complaints which have been brought against lenders by *pro se* litigants. (See *Pope v. Countrywide, et al.*, 07 CV 925, Exhibit "D" to RJN.) First Federal first became aware of this pattern after a complaint filed by Charlotte Sneed. Multiple plaintiffs have filed substantially similar complaints in the Southern District of California, each of them relying on similarly invalid points of law, and each using almost identically indecipherable jargon. (*See Sneed v. Chase Home Finance LLC, et al.*, 07 CV 729, Complaint attached as Exhibit "E" to RJN; *Belle v. Chase Home Finance LLC et al.*, 06 CV 2454, Complaint attached as Exhibit "F" to RJN; *Ashley v. First Federal Bank of California*, et al., 07 CV 2123, Complaint attached as Exhibit "G" to RJN; and, *Ramos v. First Federal Bank of California*, et al. 07 CV 06494, Complaint attached as Exhibit "H" to RJN.")

In each of these complaints, including the present Complaint, the plaintiffs string together various allegations such as securities counterfeiting, cite to existing and fictitious international treaties (including the Treaty of the United Nations, the Universal Declaration of Human Rights, and the International Bill of Rights,), and seek the enforcement of criminal code provisions against lenders. Likewise, these complaints are all virtually incomprehensible. All of them have been dismissed.

These cases were dismissed due to deficiencies. (*See* Order Dismissing First Federal from *Sneed*, Exhibit "I" to RJN; Order Dismissing *Pope*, Exhibit "H" to RJN; Order Dismissing *Belle*, Exhibit "J" to RJN, Order Dismissing *Pope*, Exhibit "K" to RJN, and, Order dismissing *Ramos*, Exhibit "L" to RJN.) While First Federal recognizes that this Court is not bound by these decisions, it respectfully requests the Court to consider them as persuasive authority given the similarity of these frivolous cases. Spencer's Complaint is similarly flawed, but unlike these complaints, Spencer is not even a borrower.

In addition, Spencer has never owned the Property.

B. Spencer's Claims

Spencer's claims are conclusory, nonsensical, and do not work with the facts he has alleged to support his legal theories. Spencer, as a private citizen, has no standing to bring many of his claims against First Federal, such as a request for a grand jury investigation. Further, most (if not all) of these claims are not cognizable as a matter of law. Spencer has failed to allege the existence of any contract between himself and First Federal, on any cognizable wrongdoing on the part of First Federal. Because Spencer fails to articulate any coherent claim for relief, the Complaint must be dismissed.

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II.

SPENCER FAILS TO MAKE SPECIFIC FACTUAL OR LEGAL ALLEGATIONS UPON WHICH RELIEF CAN BE GRANTED

A. Federal Rule of Civil Procedure 8.

A complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. Rule Civ. Proc. 8(a)(2). The Rule also requires that each claim be "simple, concise, and direct." Fed. Rule Civ. Proc.(e)(1). These rules ensure that a complaint gives fair notice to defendants and states the elements of the claim plainly and succinctly. *Jones v. Community Redevelopment Agency of City of Los Angeles*, 733 F.2d 646, 649 (9th Cir. 1984.) A complaint fails to give fair notice when it is "so verbose, confused and redundant that its true substance, if any, is well disguised." *Corcoran v. Yorty*, 347 F.2d 222, 223 (9th Cir. 1965).

B. Federal Rule of Civil Procedure 12(b)(6)

A Complaint is appropriately dismissed when it "appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Levine v. Diamanthuset, Inc.*, 950 F.2d 1478, 1482 (9th Cir. 1991). A complaint may be dismissed as a matter of law for two reasons: (1) lack of a cognizable legal theory, or (2) insufficient facts under a cognizable theory. *Robertson v. Dean Witter Reynolds, Inc.*, 749

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F.2d 530, 534 (9th Cir. 1984). In reviewing a motion to dismiss pursuant to Rule 12(b)(6), the court must assume the truth of all factual allegations and must construe them in the light most favorable to the nonmoving party. *Gompper v. VISX, Inc.*, 298 F.3d 893, 895 (9th Cir. 2002). However, conclusory legal allegations and unwarranted inferences are insufficient to defeat a motion to dismiss. *Ove v. Gwinn*, 264 F.3d 817, 821 (9th Cir. 2001).

A Rule 12(b)(6) motion may take into consideration the exhibits and matters subject to judicial notice, and how they refute conclusory allegations of a complaint:

> The court need not...accept as true allegations that contradict matters properly subject to judicial notice or by exhibit. Nor is the court required to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences." *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

C. Federal Rule of Civil Procedure 12(e)

Federal Rule of Civil Procedure 12(e) authorizes a defendant to move for a more definite statement if the complaint "is so vague and ambiguous that a party cannot reasonably be required to frame a responsive pleading[.]" Fed. R. Civ. Proc. 12(e). A complaint must provide the defendant with a sufficient basis to frame a responsive pleading. *Federal Sav. and Loan Ins. Corp. v. Musacchio*, 695 F.Supp. 1053, 1060 (N.D. Cal. 1988). Generally, the court will require a more definite statement when the pleading is "so vague or ambiguous that the opposing party cannot respond, even with a simple denial, in good faith or without prejudice to himself." *Delta Educ., Inc. v. Langlois*, 719 F.Supp. 42, 50 (D.N.H. 1989); B*ureerong v. Uvawas*, 922 F.Supp. 1450, 1461 (C.D. Cal. 1996) ("[A] motion for a more definite statement should not be granted unless the defendant literally cannot frame a responsive pleading.").

III.

SPENCER FAILS TO ALLEGE ANY CLAIMS AGAINST FIRST FEDERAL UPON WHICH THIS COURT CAN GRANT RELIEF

Spencer makes a litany of allegations against First Federal which are wholly

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irrelevant and nonsensical. Claims which are factually or legally impossible for a pro se plaintiff to prove are properly terminated, as "a court may dismiss a pro se litigant's complaint without leave to amend if it appears beyond a doubt that the plaintiff can prove no set of facts that would entitle him to relief and this defect cannot be cured by amendment." *Moore v. United States*, 193 F.R.D. 647, 651 (N.D. Cal. 2000).

Here, Spencer's Complaint seeks relief under a multitude of seemingly unrelated statutes and legal theories. Moreover, from the Complaint it is impossible to determine what relief Spencer is even requesting. Quite simply, the papers are incomprehensible and it is impossible for the Court or the Defendants to discern the basis for Spencer's lawsuit. Accordingly, First Federal respectfully requests that this Court dismiss Spencer's Complaint in its entirety. Furthermore, because the Complaint is so replete with nonsense, Spencer cannot amend the Complaint to articulate a claim for relief and this Court should dismiss the Complaint with prejudice.

IV.

THE TRUSTEE'S DEED UPON SALE EXTINGUISHED ALL JUNIOR LIENS

It is well-established that a foreclosure sale extinguishes all junior liens on a property. "What is sold by judicial foreclosure is the property owner's interest in the property at the time of the mortgage or deed of trust being foreclosed. The judicial sale removes liens from the property junior to the one being foreclosed." *Sumitomo Bank v. Davis* (1992) 4 Cal.App.4th 1306, 1314. Additionally, the resulting trustee's deed is free and clear of all subsequent or subordinate encumbrances and interests. *Carpenter v. Smallpage* (1934) 220 Cal 129. The title is also free and clear of the interest of the owner or his or her successor since that interest is foreclosed by the sale. *Hohn v. Riverside County Flood Control & Water Conservation Dist.* (1964) 228 Cal App 2d 605, 613.

As set forth above, First Federal completed a non-judicial foreclosure of the Property on June 17, 2007. (RJN, Ex "C"). As a result of the foreclosure, First Federal acquired title to the Property. As a further result, all junior liens on the Property were

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extinguished. This means that any attempts to transfer or encumber the Property before the sale were extinguished as a result of the sale. While public records show that Spencer recorded a deed of trust naming himself as the trustor and Seminole Mortgages as beneficiary, the deed of trust is "null and void" because it occurred after the sale, and after title had become vested in First Federal. (See Deed of Trust, RJN, Ex. "M"; Furthermore, First Federal has already completed unlawful detainer proceedings and obtained a Writ of Possession to the Property, thereby demonstrating that it is the lawful owner Property. (See RJN, Ex. "N".) Accordingly, Spencer cannot make any lawful claim of ownership or possession of the Property.

V.

CONCLUSION

First Federal respectfully requests that this Court dismiss the Complaint filed by Spencer in its entirety. The Complaint fails to articulate a single cognizable basis for relief. Further, because the Complaint cannot possibly state a claim, the Complaint should be dismissed with prejudice.

DATED: June 17, 2008

EPPORT, RICHMAN & ROBBINS, LLP

By: /S/ H. MARK MADNICK
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 1875 Century Park East, Suite 800, Los Angeles, California 90067-2512.

On June 17, 2008, I served true copies of the following document(s) described as **NOTICE OF MOTION AND MOTION OF FIRST FEDERAL BANK OF CALIFORNIA TO DISMISS COMPLAINT OF KEITH SPENCER** on the interested parties in this action as follows:

Keith Spencer
1224 Weaver Street
San Diego, California 92114

In Pro Per

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Epport, Richman & Robbins, LLP's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing as set forth in this Proof of Service.

I declare that I am employed in the office of a member of the bar of this Court, at whose direction this service was made. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on June 17, 2008, at Los Angeles, California.

Darice Pequignot